

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

INTERNATIONAL PAPER COMPANY,

Plaintiff,

v.

CITY OF TOMAH, WISCONSIN;
UNITED STATES DEPARTMENT
OF VETERAN AFFAIRS,

Defendants

CIVIL ACTION NO. 00-C-0539-C

UNITED STATES OF AMERICA,

Plaintiff,

v.

INTERNATIONAL PAPER COMPANY;
CITY OF TOMAH, WISCONSIN,

Defendants

CIVIL ACTION NO. 01-C-0693-C

CONSENT DECREE FOR OPERABLE UNIT 2

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I. BACKGROUND

A. On August 31, 2000, International Paper Company, Inc. ("International Paper") brought a civil action captioned Int'l Paper Co. v. City of Tomah (the "International Paper case") in the United States District Court for the Western District of Wisconsin pursuant to Section 113(f) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9613(f). The case was designated Civil Action Number 00-C-0539-C.

B. Through its complaint, International Paper sought to recover certain costs it allegedly incurred in response to the release or threatened release of hazardous substances at the Tomah Municipal Sanitary Landfill site in Monroe County, Wisconsin ("Site"), as well as a declaration of the liability of both the City of Tomah, Wisconsin ("City of Tomah") and the United States Department of Veteran Affairs ("VA") for costs to be incurred in the future.

C. On December 12, 2001, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a civil complaint against International Paper and the City of Tomah captioned United States v. Int'l Paper Co. (the "EPA case") in the United States District Court for the Western District of Wisconsin pursuant to Sections 106, 107, and 113 (g)(2) of CERCLA, 42 U.S.C. §§ 9606, 9607, 9613(g)(2). The case was designated Civil Action Number 01-C-0693-C.

D. The United States' complaint sought, inter alia: (1) reimbursement by International Paper and the City of Tomah, pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, of certain costs incurred and to be incurred by the United States in responding to releases or threatened releases of hazardous substances at or from the Site, as well as a declaration of

future liability pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2); and (2) injunctive relief in the form of an Order requiring International Paper and the City of Tomah implement the remedial actions selected by EPA in the Record of Decision ("ROD") for the Site.

E. Upon an unopposed motion filed by the United States, the International Paper case and the EPA case were consolidated pursuant to Federal Rule of Civil Procedure 42(a) under Civil Action Number 00-C-0539-C.

F. In accordance with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP") and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Wisconsin (the "State") on November 5, 2003, of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for Operable Unit 2 at the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

G. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Department of Interior on October 6, 2003, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the natural resource Trustee(s) to participate in the negotiation of this Consent Decree.

H. International Paper enters into this Consent Decree voluntarily and does not admit any liability to the United States or to any other Party, person or entity arising out of the transactions or occurrences alleged in the United States' complaint or in any way arising out of the Site, nor does International Paper acknowledge that the release or threatened release of

hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

I. The City of Tomah enters into this Consent Decree voluntarily and does not admit any liability to the United States or to any other Party, person or entity arising out of the transactions or occurrences alleged in the United States' complaint or in any way arising out of the Site, nor does the City of Tomah admit any liability to any other Party, person or entity arising out of the transactions or occurrences alleged in International Paper's complaint, nor does the City of Tomah acknowledge that the releases or threatened releases of hazardous substance(s) at or from the Site constitute an imminent or substantial endangerment to the public health or welfare or the environment.

J. The VA does not admit any issue of fact or law.

K. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on March 31, 1989, 54 Fed. Reg. 19,526.

L. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, Union Camp Corporation ("Union Camp," International Paper's predecessor), the VA, and the City of Tomah commenced on January 11, 1994, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

M. The Site was subsequently divided into two operable units that would be the subject of remedial response work: "Operable Unit 1" or "OU1" being the portion of the remedial response at the Site dealing with source control, and "Operable Unit 2" or "OU2" being the portion of the remedial response at the Site dealing with contaminated ground water.

N. Pursuant to 40 C.F.R. § 300.430, Union Camp, the VA, and the City of Tomah completed a Remedial Investigation ("RI") Report on July 15, 1996, and a Feasibility Study ("FS") Report for OU1 on July 15, 1997.

O. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the OU1 FS Report, as well as the proposed Remedial Action ("RA") plan for OU1, on August 7, 1997, and August 11, 1997, in two major local newspapers of general circulation. EPA held a public meeting on August 18, 1997, to discuss the RI/FS Report and the proposed RA plan for OU2. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

P. EPA's decision on the Remedial Action to be implemented for OU1 is embodied in a final Record of Decision ("ROD"), executed on September 25, 1997 ("OU1 ROD"), upon which the State has given its concurrence. The OU1 ROD includes a responsiveness summary to the public comments received by EPA pertaining to the proposed RA plan for OU1. Notice of the final plan was published on December 29, 1997, and on January 9, 1998, in two major local newspapers of general circulation, in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

Q. On September 29, 1998, Union Camp signed an Administrative Order on Consent ("AOC") for Remedial Design ("RD"), in which it agreed to perform the design necessary to implement the OU1 remedy designated by the EPA in the OU1 ROD. EPA signed the AOC on September 30, 1998.

R. On September 30, 1999, EPA issued a Unilateral Administrative Order ("UAO") pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, directing International Paper to implement the Remedial Action for OU1. International Paper responded to the UAO by agreeing to perform the work outlined in the RA Work Plan for OU1, as approved by EPA.

S. On February 19, 2002, this Court entered a Consent Decree among the United States, International Paper, and the City of Tomah (collectively, the "Parties") in Civil Action Numbers 00-C-0539-C and 01-C-0693-C ("2002 Consent Decree"), which addressed response action at the Site related to Operable Unit 1: containing the source of contamination by capping the 18-acre Tomah Municipal Sanitary Landfill, expanding an existing gas collection system, and monitoring the effectiveness of these response actions.

T. The Parties now enter into this Consent Decree for Operable Unit 2 to address response action at the Site related to Operable Unit 2, i.e., groundwater monitoring.

U. In April of 2003, International Paper, the VA, and the City of Tomah completed a FS Report for OU2.

V. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS Report, as well as the proposed RA plan for OU2 on June 6, 2003, in two major local newspapers of general circulation. EPA held a public meeting on June 24, 2003, to discuss the proposed RA plan for OU2. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Director of the Superfund Division based the selection of the OU2 response action.

W. EPA's decision on the Remedial Action to be implemented for OU2 is embodied in a final ROD, executed on September 24, 2003 ("OU2 ROD"), upon which the State has given

its concurrence. The OU2 ROD includes a responsiveness summary to the public comments. In accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b), notice of the final RA plan was published on October 13 and 16, 2003, in two major local newspapers of general circulation.

X. International Paper herein agrees to undertake Remedial Action for OU2, as shall be set forth in the Remedial Design/Remedial Action Work Plan for OU2 developed pursuant to Section VI of this Consent Decree. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the Remedial Action selected for the Site by the OU1 and OU2 RODs, and the Site Work to be performed by International Paper, shall constitute a response action taken or ordered by the President.

Y. The Parties recognize, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over International Paper and the City of Tomah. Solely for the purposes of this Consent Decree and the underlying complaints, International Paper and the City of Tomah waive all objections and defenses that they may have to jurisdiction of the Court or to venue in

this District. International Paper and the City of Tomah shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States, the City of Tomah, and International Paper and its successors and assigns. Any change in ownership or corporate status of International Paper including, but not limited to, any transfer of assets or real or personal property, shall in no way alter International Paper's responsibilities under this Consent Decree.

3. International Paper shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing International Paper with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. International Paper or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. International Paper shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with International Paper within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*

“City of Tomah” shall mean the City of Tomah, Monroe County, Wisconsin.

“Consent Decree” shall mean this Consent Decree for Operable Unit 2 and all appendices attached hereto (listed in Section XXX). In the event of a conflict between this Consent Decree and any appendix, this Consent Decree shall control.

“Construction Completion Report” shall mean the report required under Section IV of the Statement of Work.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall be the effective date of this Consent Decree as provided in Paragraph 109.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV, and Paragraph 88 of Section XXI. Future Response Costs shall also include all Interim Response Costs.

"Interim Response Costs" shall mean all costs, including direct and indirect costs, incurred by the United States in connection with Operable Unit 2 between May 19, 2003 and the Effective Date.

"Interest," shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. A different rate of interest may be specified for amounts owed by the City of Tomah to International Paper as set forth in the International Paper/City of Tomah Side Agreement.

"International Paper" shall mean International Paper Company.

"International Paper/City of Tomah Side Agreement" shall mean a written agreement between International Paper and the City of Tomah, dated December 1, 2001.

"Major Milestone" shall mean a due date designated for a submission or task listed in Section IV of the Statement of Work or expressly designated as a Major Milestone in any submission required under this Consent Decree or the Statement of Work.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Operable Unit 1" or "OU1" shall mean the portion of the remedial response at the Site dealing with source control, as set forth in the OU1 Record of Decision.

"Operable Unit 2" or "OU2" shall mean the portion of the remedial response at the Site dealing with contaminated ground water, as set forth in the OU2 Record of Decision.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work ("SOW").

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper case letter.

"Parties" shall mean the United States, International Paper, and the City of Tomah.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section 2.12.2 of the OU2 ROD and Section II of the SOW. For purposes of Paragraph 50 (Completion of the Remedial Action),

"Performance Standards" shall also include the cleanup standards and other measures of

achievement of the goals of the Remedial Action set forth in Section VII of the OU1 Record of Decision.

“Potentially Responsible Parties” or “PRPs” shall mean parties whom EPA identifies as potentially liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for costs incurred at the Site.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

“Record of Decision for Operable Unit 1” or “OU1 ROD” shall mean the EPA Record of Decision relating to Source Control at the Site, Operable Unit 1, signed on September 25, 1997, by the Superfund Division Director, EPA Region 5, including all attachments thereto, and as may be amended in the future. The OU1 ROD is attached hereto as Appendix A.

“Record of Decision for Operable Unit 2” or “OU2 ROD” shall mean the EPA Record of Decision relating to contaminated ground water at the Site, Operable Unit 2, signed on September 24, 2003, by the Superfund Division Director, EPA Region 5, including all attachments thereto, and as may be amended in the future. The OU2 ROD is attached hereto as Appendix B.

“Remedial Action” shall mean those activities, except for Operation and Maintenance, to be undertaken by International Paper to implement the OU1 and OU2 RODs, in accordance with the Statement of Work for this Consent Decree, the Statement of Work for the 2002 Consent Decree, the OU2 RD/RA Work Plan, the OU1 RA Work Plan, and other plans approved by EPA.

“Remedial Action Work Plan for OU1” or “OU1 RA Work Plan” shall mean the work plan developed pursuant to EPA Administrative Order Docket No. V-W-99-C-566 and incorporated by reference in Paragraph 18 of the 2002 Consent Decree.

“Remedial Design” shall mean those activities to be undertaken by International Paper to develop the final plans and specifications for the Remedial Action pursuant to the OU2 RD/RA Work Plan.

“Remedial Design/Remedial Action Work Plan for OU2” or “OU2 RD/RA Work Plan” shall mean the document developed pursuant to Paragraph 12 of this Consent Decree, and any amendments thereto.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Federal Agency” shall mean the United States Department of Veterans Affairs, which is resolving any claims which have been or could be asserted against it with regard to this Site as provided in this Consent Decree.

“Site” shall mean the Tomah Municipal Sanitary Landfill Superfund Site, encompassing approximately 40 acres, located on West 24th Avenue in Monroe County, Wisconsin, and depicted generally on the map attached as Appendix D.

“State” shall mean the State of Wisconsin; only for Paragraphs 9, 10, and 16 however, “State” shall mean any of the several United States.

“Statement of Work” or “SOW” shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance with respect to Operable Unit 2 at the Site, as set forth in Appendix C to this Consent Decree and any modifications made in accordance with this Consent Decree. In addition, “Statement of Work for the 2002 Consent

Decree” shall mean the statement of work for implementation of the Remedial Action and Operation and Maintenance with respect to Operable Unit 1 at the Site and any modifications made in accordance with the 2002 Consent Decree.

“Supervising Contractor” shall mean the principal contractor retained by International Paper to supervise and direct the implementation of the Work under this Consent Decree.

“United States” shall mean the United States of America, including all of its departments, agencies, and instrumentalities, which includes without limitation EPA, the Settling Federal Agency and any federal natural resource trustee.

“VA” shall mean the United States Department of Veterans Affairs and any successor departments or agencies of the United States.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any “hazardous material” under Section 292.01(5) of the Wisconsin Statutes, Wis. Stat. § 292.01(5) (1997).

“WDNR” shall mean the Wisconsin Department of Natural Resources and any successor departments or agencies of the State.

“Work” shall mean all activities International Paper is required to perform under this Consent Decree, except those required by Section XXVI (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The Parties entered into the 2002 Consent Decree to address response work for OU1, and now enter into this Consent Decree to address response

work for OU2. The objectives of the Parties in entering into this Consent Decree are: (a) to protect public health or welfare or the environment at the Site by the implementation of response actions by International Paper; (b) to reimburse the United States' for costs incurred and to be incurred with regard to the OU2 portion of the response action at the Site; (c) to resolve, as provided in this Consent Decree, the claims of International Paper which have been or could have been asserted against the United States or the City of Tomah with regard to the OU2 portion of the response action at the Site; and (d) to avoid the complication and expense of further litigation of other such claims concerning the Site.

6. Effect of this Consent Decree on the 2002 Consent Decree. This Consent Decree shall not supersede the 2002 Consent Decree, nor shall this Consent Decree have any effect upon any of the duties owed by the Parties thereunder. Nothing in this Consent Decree shall be deemed to bar the United States from enforcing duties owed by International Paper under the 2002 Consent Decree, and enforcement of such duties may take place at any time, including after the Effective Date of this Consent Decree.

7. Commitments by International Paper. International Paper shall finance and perform the Work in accordance with this Consent Decree, the OU2 ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by International Paper and approved by EPA pursuant to this Consent Decree. International Paper shall also reimburse the United States for Future Response Costs as provided in this Consent Decree.

8. Commitments by Settling Federal Agency. The VA as the "Settling Federal Agency" shall reimburse International Paper for its response costs as provided in this Consent Decree.

9. Compliance With Applicable Law. All activities undertaken by International Paper pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. International Paper must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the OU2 ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

10. Permits.

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, 40 C.F.R. § 300.400(e), no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, International Paper shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. International Paper may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF THE WORK BY INTERNATIONAL PAPER

11. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by International Paper pursuant to Sections VI (Performance of the Work by International Paper), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be conducted under the direction and supervision of the Supervising Contractor. International Paper's current Supervising Contractor under the 2002 Consent Decree, Conestoga-Rovers & Associates, shall continue to be Supervising Contractor. If at any time International Paper proposes to **change** its current Supervising Contractor, International Paper shall give notice to EPA and **must** obtain an authorization to proceed from EPA before the proposed Supervising Contractor **performs**, directs, or supervises any Work under this Consent Decree. If EPA disapproves a **change** in Supervising Contractor proposed by International Paper, EPA shall give its reasons.

b. If EPA disapproves a proposed change in Supervising Contractor, EPA will notify International Paper in writing. International Paper shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within thirty (30) days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to **any** of the other contractors. EPA shall give its reasons for disapproving any contractor. International Paper may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within twenty-one (21) days of EPA's authorization to proceed.

12. OU2 Remedial Design/Remedial Action.

a. Within thirty (30) days after the Effective Date of this Consent Decree, International Paper shall submit to the EPA and the State one (1) copy each of a Work Plan for the design and implementation of the Remedial Action for OU2 at the Site (the "Remedial Design/Remedial Action Work Plan for OU2" or "OU2 RD/RA Work Plan"). The OU2 RD/RA Work Plan shall provide for design, construction, and implementation of the remedy set forth in the OU2 ROD, in accordance with the SOW, for achievement of the Performance Standards and other requirements set forth in the OU2 ROD, this Consent Decree, and/or the SOW. Upon its approval by EPA, the OU2 RD/RA Work Plan shall be incorporated into and become enforceable under this Consent Decree.

b. The OU2 RD/RA Work Plan shall include plans and schedules for implementation of the OU2 remedial action, remedial design, and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) a preliminary design submittal, as detailed in Section III, Task 2(A) of the SOW; (2) final design submittal, as detailed in Section III, Task 2(B) of the SOW; (3) final project schedule for the construction and implementation of the OU2 RA, consistent with Section III, Task 3 of the SOW; (4) methods for documenting and reporting data gathered as part of the groundwater monitoring plan (Monitored Natural Attenuation, "MNA") under the OU2 RA; (5) institutional controls consistent with the OU2 ROD, such as governmental controls, proprietary controls, and information devices; (6) contingency plans consistent with the OU2 ROD.

c. Within thirty (30) days after the Effective Date of this Consent Decree, International Paper shall submit to EPA and the State one (1) copy each of a Health and Safety

Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

d. Upon approval of the OU2 RD/RA Work Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, International Paper shall implement the OU2 RD/RA Work Plan. International Paper shall submit to EPA and the State all plans, submittals and other deliverables required under the approved OU2 RD/RA Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, International Paper shall not commence further OU2 RD/RA activities at the Site prior to approval of the OU2 RD/RA Work Plan.

13. International Paper shall implement the Remedial Action and O&M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

14. Modification of the SOW or Related Work Plans.

a. If EPA determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or such work plans; provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. For the purposes of this Paragraph and Paragraphs 50 and 51 only, the "scope of the remedy selected in the ROD" is: monitored natural attenuation of groundwater

contaminants outside the landfill to meet Applicable and Relevant and Appropriate Requirements; long-term monitoring of groundwater contamination and addressing migration of groundwater contaminants, if any; and establishment of appropriate deed restrictions.

c. If International Paper objects to any modification determined by EPA to be necessary pursuant to this Paragraph, it may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 70 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. International Paper shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

15. International Paper acknowledges and agrees that nothing in this Consent Decree, the SOW, or the OU2 RD/RA Work Plan constitutes a warranty or representation of any kind by the United States that compliance with the work requirements set forth in the SOW and the OU2 RD/RA Work Plan will achieve the Performance Standards.

16. Off-Site Shipments.

a. International Paper shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state, and to the EPA Project Coordinator, of such shipment of Waste Material. However, this notification requirement shall

not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

(1) International Paper shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. International Paper shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

(2) The identity of the receiving facility and state will be determined by International Paper following the award of the contract for Remedial Action construction. International Paper shall provide the information required by Paragraph 16.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, International Paper shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. International Paper shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.

VII. REMEDY REVIEW

17. Periodic Review. International Paper shall conduct, at least every five years as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and applicable regulations, any studies and investigations as requested by EPA to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment.

18. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

19. Opportunity To Comment. International Paper and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. §§ 9613(k)(2), 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and to submit written comments for the record during the comment period.

20. International Paper's Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, International Paper shall undertake such further response actions to the extent that the reopener conditions in Paragraph 84 or Paragraph 85 are satisfied. International Paper may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 84 or Paragraph 85 of Section XXI (Covenants by the United States) are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to the whether the

Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 70 (record review).

21. Submissions of Plans. If International Paper is required to perform the further response actions pursuant to Paragraph 20, it shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by International Paper) and shall implement the plan approved by EPA in accordance with the provisions of this Consent Decree.

VIII. QUALITY, ASSURANCE SAMPLING, AND DATA ANALYSIS

22. International Paper shall use quality assurance, quality control, and chain of custody procedures for all compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to International Paper of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, International Paper shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Consent Decree. International Paper shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by International

Paper in implementing this Consent Decree. In addition, International Paper shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. International Paper shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Consent Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Consent Decree; however, upon approval by EPA, after opportunity for review and comment by the State, International Paper may use other analytical methods which are as stringent as or more stringent than the CLP-approved methods. International Paper shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. International Paper shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. International Paper shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Consent Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

23. Upon request, International Paper shall allow split or duplicate samples to be taken by EPA or its authorized representatives. International Paper shall notify EPA not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow International Paper to take split or duplicate samples of any samples it takes as part of the United States' oversight of International Paper's implementation of the Work.

24. International Paper shall submit to EPA two (2) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of International Paper with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

25. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

26. If any property where access and/or land/water use restrictions are needed to implement this Consent Decree is owned or controlled by the City of Tomah, the City of Tomah shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States and its representatives, including EPA and its contractors, access at all reasonable

times to such property for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

- (1) monitoring the Work;
- (2) verifying any data or information submitted to the United States;
- (3) conducting investigations relating to contamination at or near the Site;
- (4) obtaining samples;
- (5) assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
- (7) implementing the Work pursuant to the conditions set forth in Paragraph 88 of this Consent Decree;
- (8) inspecting and copying records, operating logs, contracts, or other documents maintained or generated by International Paper or its agents, consistent with Section XXV (Access to Information);
- (9) assessing International Paper's compliance with this Consent Decree; and
- (10) determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree, refrain from using the property in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited to, a prohibition on drilling new wells on land overlying the plume of contamination where hook-ups to municipal water have been provided; and

c. execute and record with the Register of Deeds for Monroe County, State of Wisconsin, an easement, running with the land, that grants to the parties identified below in this subparagraph: (i) a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26.a of this Consent Decree, and (ii) the right to enforce the land/water use restrictions listed in Paragraph 26.b of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The City of Tomah shall grant the access rights and the rights to enforce the land/water use restrictions to (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, and (iii) International Paper and its representatives. The City of Tomah shall, within 60 days of entry of this Consent Decree, submit to EPA for review and approval with respect to such property:

(1) a draft easement, in substantially the form attached hereto as Appendix E, that is enforceable under the laws of the State of Wisconsin, and

(2) a current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free

and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, the City of Tomah is unable to obtain release or subordination of such prior liens or encumbrances).

Within 15 days of EPA's approval and acceptance of the easement and the title evidence, the City of Tomah shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Register of Deeds for Monroe County. Within 30 days of recording the easement, the City of Tomah shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

27. If any property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than International Paper or the City of Tomah, International Paper shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for International Paper, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26.a of this Consent Decree;

b. an agreement, enforceable by International Paper and the United States, to refrain from using the Site, or such other property, in any manner that would interfere with or

adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited to, a prohibition on drilling new wells on land overlying the plume of contamination, and on using existing wells on land overlying the plume of contamination where hook-ups to municipal water have been provided; and

c. the execution and recordation with the Register of Deeds for Monroe County, State of Wisconsin, of an easement, running with the land, that grants to the parties identified below in this subparagraph: (i) a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26.a of this Consent Decree, and (ii) the right to enforce the land/water use restrictions listed in Paragraph 26.b of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and rights to enforce land/water use restrictions shall be granted to (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, and (iii) International Paper and its representatives. Within 60 days of entry of this Consent Decree, International Paper shall submit to EPA for review and approval with respect to such property:

(1) a draft easement, in substantially the form attached hereto as Appendix E, that is enforceable under the laws of the State of Wisconsin, and

(2) a current title insurance commitment, or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances

are approved by EPA or when, despite best efforts, International Paper is unable to obtain release or subordination of such prior liens or encumbrances).

Within 15 days of EPA's approval and acceptance of the easement and the title evidence, International Paper shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, the easement shall be recorded with the Register of Deeds for Monroe County. Within 30 days of the recording of the easement, International Paper shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

28. For purposes of Paragraphs 26.c.(2), 27, and 27.c.(2) of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien or encumbrance. If (a) any access or land/water use restriction agreements required by Paragraphs 27.a or 27.b of this Consent Decree are not obtained within 60 days of the date of entry of this Consent Decree, (b) any access easements or restrictive easements required by Paragraph 27.c of this Consent Decree are not submitted to EPA in draft form within 60 days of the date of entry of this Consent Decree, or (c) International Paper or the City of Tomah is unable to obtain an agreement pursuant to Paragraph 26.c.(1) or Paragraph 27.c.(1) from the holder of a prior lien or encumbrance to release or subordinate such lien or

encumbrance to the easement being created pursuant to this Consent Decree within 60 days of the date of entry of this Consent Decree, International Paper shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that were taken to attempt to comply with Paragraph 26 or 27 of this Consent Decree. The United States may, as it deems appropriate, assist International Paper and the City of Tomah in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. International Paper shall reimburse the United States in accordance with the procedures in Section XVI (Payments for Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

29. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the OU2 ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, International Paper and the City of Tomah shall cooperate with EPA's efforts to secure such governmental controls.

30. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

31. In addition to any other requirement of this Consent Decree, International Paper shall submit to EPA and the State one (1) copy each of a written quarterly OU2 progress report by the tenth day of every quarter following the lodging of this Consent Decree, until EPA approves the OU2 Construction Completion Report. The quarterly report submitted in accordance with this Paragraph: (a) must describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous quarter; (b) include a summary of all results of sampling and tests and all other data received or generated by International Paper or its contractors or agents in the previous quarter; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous quarter; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next quarter and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that International Paper has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous quarter and those to be undertaken in the next quarter. If requested by EPA, International Paper shall—in addition to the written quarterly reports required under this Paragraph—provide briefings for EPA to discuss the progress of the Work.

32. International Paper shall notify EPA of any change in the schedule described in the quarterly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

33. Upon the occurrence of any event during performance of the Work that International Paper is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, International Paper shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 5, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103, 42 U.S.C. § 9603, or EPCRA Section 304, 42 U.S.C. § 11004.

34. Within 20 days of the onset of such an event, International Paper shall furnish to the United States a written report, signed by International Paper's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, International Paper shall submit a report setting forth all actions taken in response thereto.

35. International Paper shall submit three (3) copies of all plans, reports, and data required by the SOW, the OU2 RD/RA Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. International Paper shall simultaneously

submit one (1) copy of all such plans, reports and data to the State. Upon request by EPA International Paper shall submit in electronic form all portions of any report or other deliverable International Paper is required to submit pursuant to the provisions of this Consent Decree.

36. All reports and other documents submitted by International Paper to EPA (other than the quarterly progress reports referred to above) which purport to document International Paper's compliance with the terms of this Consent Decree shall be signed by an authorized representative of International Paper.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

37. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that International Paper modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing International Paper at least one notice of deficiency and an opportunity to cure within thirty (30) days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

38. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 37(a), (b), or (c), International Paper shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their

right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 37(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

39. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 37(d), International Paper shall, within thirty (30) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 40 and 41.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 37(d), International Paper shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve International Paper of any liability for stipulated penalties under Section XX (Stipulated Penalties).

40. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require International Paper to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. International Paper shall implement any such plan, report, or item as

modified or developed by EPA, subject only to its right to invoke the procedures set forth in Section XIX (Dispute Resolution).

41. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, International Paper shall be deemed to have failed to submit such plan, report, or item timely and adequately unless International Paper invokes the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX.

42. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

43. The Project Coordinator and/or Alternate Project Coordinator currently designated by International Paper or EPA with respect to OU1 shall also be the Project Coordinator and/or Alternate Project Coordinator with respect to OU2. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no

event later than the actual day the change is made. International Paper's Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. International Paper's Project Coordinator shall not be an attorney for International Paper in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

44. The United States may designate other representatives, including, but not limited to, EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

45. Prior to lodging of this Consent Decree, International Paper provided EPA with information regarding its financial resources and its ability to finance the Work. The United States has reviewed this information and is satisfied that International Paper has sufficient financial resources to assure that it can and shall timely complete all of the Work.

46. If any material change occurs in International Paper's financial resources such that International Paper may no longer have the financial ability to assure timely completion of the Work, International Paper shall promptly notify EPA.

47. If the United States obtains information regarding any material change in International Paper's financial resources that leads the United States to believe that International Paper may no longer have the financial ability to assure timely completion of all of the Work, the United States shall so notify International Paper. International Paper shall have sixty (60) days after receiving any such written notice to respond and provide corrected or supplemental information, or otherwise demonstrate to the United States' satisfaction that International Paper does have the ability to timely complete all of the Work.

48. If within sixty (60) days after receiving notice noted in Paragraph 47 above, International Paper does not demonstrate to the United States' satisfaction that it has the ability to timely complete all of the Work, the United States may require International Paper to establish and maintain financial security for the estimated cost of the Work remaining to be completed in one of the forms described in 40 C.F.R. § 264.143. Within thirty (30) days of receiving written notice of such requirement by the United States, International Paper shall demonstrate that it has established and is maintaining financial security in one of the forms described in 40 C.F.R. § 264.143.

49. If International Paper seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 48 of this Consent Decree, International Paper shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If International Paper seeks to demonstrate its ability to complete the Work by

means of the financial test or the corporate guarantee pursuant to Paragraph 48, it shall resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the Effective Date of this Consent Decree. In the event that the United States determines at any time that the financial assurances provided pursuant to this Section are inadequate, International Paper shall, within thirty (30) days of receipt of notice of the United States' determination, obtain and present to International Paper for approval one of the other forms of financial assurance listed in Paragraph 48 of this Consent Decree. International Paper's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

XIV. CERTIFICATION OF COMPLETION

50. Completion of the Remedial Action.

a. Within 90 days after International Paper concludes that the Remedial Action has been fully performed and the Performance Standards have been attained, International Paper shall schedule and conduct a pre-certification inspection to be attended by International Paper, EPA, and the State. If, after the pre-certification inspection, International Paper still believes that the Remedial Action has been fully performed and the Performance Standards have been attained, it shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, a registered professional engineer and International Paper's Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following

statement, signed by a responsible corporate official of International Paper or International Paper's Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify International Paper in writing of the activities that must be undertaken by International Paper pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require International Paper to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require International Paper to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). International Paper shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the

State, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to International Paper. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants by the United States). Certification of Completion of the Remedial Action shall not affect International Paper's obligations under this Consent Decree.

51. Completion of the Work.

a. Within 90 days after International Paper concludes that all phases of the Work (including O & M), have been fully performed, International Paper shall schedule and conduct a pre-certification inspection to be attended by representatives of International Paper, EPA and the State. If, after the pre-certification inspection, International Paper still believes that the Work has been fully performed, International Paper shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of International Paper or International Paper's Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify International Paper in writing of the activities that must be

undertaken by International Paper pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require International Paper to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require International Paper to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). International Paper shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by International Paper and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so notify International Paper in writing.

XV. EMERGENCY RESPONSE

52. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, International Paper shall, subject to Paragraph 53, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, International Paper shall notify the EPA

Emergency Response Branch, Region 5. International Paper shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that International Paper fails to take appropriate response action as required by this Section, and EPA takes such action instead, International Paper shall reimburse EPA all costs of the response action incurred not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs).

53. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States to: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site; or (b) direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants by the United States).

XVI. PAYMENTS FOR RESPONSE COSTS

54. Payments for Future Response Costs. International Paper shall pay to EPA all Future Response Costs incurred not inconsistent with the National Contingency Plan. The United States will send International Paper a bill requiring payment for such Future Response Costs that includes an EPA Itemized Cost Summary and a Department of Justice Cost Summary (or the functional equivalent) on a periodic basis.

a. International Paper shall make all payments within 30 days of its receipt of each bill requiring payment, except as otherwise provided in Paragraph 55. International Paper

shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number 05-3F, and DOJ Case Number 90-11-2-1317. International Paper shall send the check(s) to U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673.

b. At the time of payment, International Paper shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVII (Notices and Submissions).

c. The total amount to be paid by International Paper pursuant to Paragraph 54.a shall be deposited in the EPA Hazardous Substance Superfund.

55. International Paper may contest payment of any Future Response Costs under Paragraph 54 if it determines that the United States has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, International Paper shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 54. Simultaneously, International Paper shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Wisconsin and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. International Paper shall send to the United States, as provided in Section XXVII (Notices and Submissions), a copy of the

transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, International Paper shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, International Paper shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 54. If International Paper prevails concerning any aspect of the contested costs, International Paper shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the United States in the manner described in Paragraph 54; International Paper shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding International Paper's obligation to reimburse the United States for its Future Response Costs.

56. In the event that the payments required by Paragraph 54 are not made within 30 days of International Paper's receipt of the bill, International Paper shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of International Paper's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of International Paper's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to

Paragraph 73. International Paper shall make all payments required by this Paragraph in the manner described in Paragraph 54.

57. Payment by the United States. As soon as reasonably practicable after the effective date of this Consent Decree, and consistent with Paragraph 58, the United States, on behalf of the Settling Federal Agency, shall pay to International Paper \$350,000 in reimbursement of International Paper's Future Response Costs, by Electronic Funds Transfer in accordance with instructions provided by International Paper. Such payment represents 15 percent of: (1) the costs incurred and estimated to be incurred by International Paper as a result of performing the Work, as provided by this Consent Decree; and (2) the estimated Future Response Costs.

58. In the event that the payment required by Paragraph 57 is not made within one hundred twenty (120) days of the effective date of this Consent Decree, Interest on the unpaid balance shall be paid at the rate established pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the effective date of this Consent Decree and accruing through the date of the payment.

59. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of the Settling Federal Agency under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that the Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

XVII. INDEMNIFICATION AND INSURANCE

60. International Paper's Indemnification of the United States.

a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of International Paper as EPA's authorized representative under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). International Paper shall indemnify, save and hold harmless the United States (with the exception of the Settling Federal Agency) and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of International Paper, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of International Paper as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Further, International Paper agrees to pay the United States (with the exception of the Settling Federal Agency) all costs the United States incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of International Paper, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of International Paper in carrying out activities pursuant to this Consent Decree. Neither International Paper nor any such contractor shall be considered an agent of the United States.

b. The United States shall give International Paper notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 60, and shall consult with International Paper prior to settling such claim.

61. International Paper waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between International Paper and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, International Paper shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between International Paper and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

62. *International Paper shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 50.b of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of three million dollars, combined single limit, and automobile liability insurance with limits of one million dollars, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, International Paper shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of International Paper in furtherance of this Consent Decree. If International Paper demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent*

to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, International Paper need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

63. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of International Paper, of any entity controlled by International Paper, or of International Paper's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite International Paper's best efforts to fulfill the obligation. The requirement that International Paper exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

64. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, International Paper shall orally notify EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 5, within three (3) days of when International Paper first knew that the event might cause a delay. Within seven (7) days thereafter, International Paper shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to

prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; International Paper's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of International Paper, such event may cause or contribute to an endangerment to public health, welfare or the environment. International Paper shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude International Paper from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. International Paper shall be deemed to know of any circumstance of which International Paper, any entity controlled by International Paper, or International Paper's contractors knew or should have known.

65. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify International Paper in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify International Paper in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

66. If International Paper elects to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, International Paper shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that International Paper complied with the requirements of Paragraphs 63 and 64, above. If International Paper carries this burden, the delay at issue shall be deemed not to be a violation by International Paper of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

67. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of International Paper that have not been disputed in accordance with this Section. Nor shall this Section apply to disputes between or among International Paper, the City of Tomah and/or the Settling Federal Agency under this Consent Decree, or to disputes between the City of Tomah and International Paper under the International Paper/City of Tomah Side Agreement.

68. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless

it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

69. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 14 days after the conclusion of the informal negotiation period, International Paper invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by International Paper. The Statement of Position shall specify International Paper's position as to whether formal dispute resolution should proceed under Paragraph 70 or Paragraph 71.

b. Within 21 days after receipt of International Paper's Statement of Position, EPA will serve on International Paper its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 70 or 71. Within 14 days after receipt of EPA's Statement of Position, International Paper may submit a Reply.

c. If there is disagreement between EPA and International Paper as to whether dispute resolution should proceed under Paragraph 70 or 71, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if International Paper ultimately appeals to the Court to resolve the dispute, the Court

shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 70 and 71.

70. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by International Paper regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Superfund Division, EPA Region 5, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 70.a. This decision shall be binding upon International Paper, subject only to the right to seek judicial review pursuant to Paragraph 70.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 70.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by International Paper with the Court and served on all Parties within 10 days of receipt of

EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to International Paper's motion.

d. In proceedings on any dispute governed by this Paragraph, International Paper shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 70.a.

71. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of International Paper's Statement of Position submitted pursuant to Paragraph 69, the Director of the Superfund Division, EPA Region 5, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on International Paper unless, within 10 days of receipt of the decision, International Paper files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to International Paper's motion.

b. Notwithstanding Paragraph X of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

72. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of International Paper under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 80. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that International Paper does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

73. Nonpayment of Future Costs.

a. If International Paper fails to pay any amounts due to EPA under this Consent Decree by the required date, International Paper shall pay to EPA as a stipulated penalty, in addition to the Interest required by Paragraph 56, \$100 per violation per day that such payment is late. Stipulated penalties pursuant to this Paragraph are due and payable within 30 days of the date of the demand for payment of the penalties by EPA.

b. All payments shall indicate that the payment is for stipulated penalties and be in the form of a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund" and referencing the EPA Region and Site/Spill ID #05-3F, USAO File Number 2000V00303, the DOJ case number 90-11-2-1317, and the name and address of the party making payment. Copies of the check(s) shall be sent to the United States as specified in

Section XXVII (Notices and Submissions) and to the EPA Region 5 Financial Management Officer, Mail Code MF 10-J, 77 West Jackson Boulevard, Chicago, Illinois 60604.

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified International Paper of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

74. Non-Performance of Work.

a. International Paper shall be liable for stipulated penalties in the amounts set forth in Paragraphs 74.b and 74.c, below, to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by International Paper shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

b. The following stipulated penalties shall accrue per violation per day for any failure to meet a Major Milestone, as provided in Section IV of the SOW:

Penalty per violation, per day	Period of Noncompliance
\$100	First week
\$200	Second or partial week thereafter; all subsequent weeks

c. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports pursuant to Section X of this Consent Decree:

Penalty per violation, per day	Period of Noncompliance
\$50	First week
\$100	Second or partial week thereafter; all subsequent weeks

75. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 88 of Section XXI (Covenants by the United States), International Paper shall be liable for a stipulated penalty in the amount of ten thousand dollars (\$10,000).

76. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the thirty-first (31st) day after EPA's receipt of such submission until the date that EPA notifies International Paper of any deficiency; (2) with respect to a decision by the Director of the Superfund Division, EPA Region 5, under Paragraph 70 or 71 of Section XIX (Dispute Resolution), during the period, if any, beginning on the twenty-first (21st) day after the date that International Paper's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the thirty-first (31st) day after this Court's receipt of the final submission regarding the dispute until the date that this Court

issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

77. Following EPA's determination that International Paper has failed to comply with a requirement of this Consent Decree, EPA may give International Paper written notification of the same and describe the noncompliance. EPA may send International Paper a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified International Paper of a violation.

78. All penalties accruing under this Paragraph shall be due and payable to the United States within thirty (30) days of International Paper's receipt from EPA of a demand for payment of the penalties, unless International Paper invokes the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago Illinois 60673, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #05-3F, the DOJ Case Number 90-11-2-1317, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVI (Notices and Submissions).

79. The payment of penalties shall not alter in any way International Paper's obligation to complete the performance of the Work required under this Consent Decree.

80. Penalties shall continue to accrue as provided in Paragraph 76, above, during any dispute resolution period, but need not be paid until the following:

a. if the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within fifteen (15) days of the agreement or the receipt of EPA's decision or order;

b. if the dispute is appealed to this Court and the United States prevails in whole or in part, International Paper shall pay all accrued penalties determined by this Court to be owed to EPA within sixty (60) days of receipt of this Court's decision or order, except as provided in subparagraph (c) below;

c. if this Court's decision is appealed by any Party, International Paper shall pay all accrued penalties determined by this Court to be owing to the United States into an interest-bearing escrow account within sixty (60) days of receipt of this Court's decision or order; penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days, and within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to International Paper to the extent that they prevail.

81. Enforcement of Penalties by the United States.

a. If International Paper fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Interest on the unpaid balance shall begin to accrue on the date of demand made pursuant to Paragraph 76.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of International Paper's violation of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l). Provided, however, that the United States shall not

seek civil penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Consent Decree.

c. If the United States brings an action against International Paper to enforce the payment provisions of this Consent Decree, International Paper shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time, if the EPA is the prevailing party.

82. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXI. COVENANTS BY THE UNITED STATES

83. Covenants Not to Sue or Take Administrative Action.

a. In consideration of the actions that will be performed and the payments that will be made by International Paper under the terms of the Consent Decree, and except as specifically provided in Paragraphs 84, 85, and 87, the United States covenants not to sue or to take administrative action against International Paper or the City of Tomah pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the Effective Date of this Consent Decree. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 50.b of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by International Paper of its obligations under this Consent Decree.

These covenants not to sue extend only to International Paper and the City of Tomah, and do not extend to any other person.

b. In consideration of the payments that will be made by the Settling Federal Agency under the terms of this Consent Decree, and except as specifically provided in Paragraphs 84, 85, and 87 of this Section, EPA covenants not to take administrative action against the Settling Federal Agency pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), relating to the Site. EPA's covenant is conditioned upon the satisfactory performance by the Settling Federal Agency of its obligations under this Consent Decree. EPA's covenant extends only to the Settling Federal Agency and does not extend to any other person.

84. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel International Paper or the City of Tomah, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agency

- a. to perform further response actions relating to the Site, or
- b. to reimburse the United States for additional costs of response,

if prior to Certification of Completion of the Remedial Action:

- (1) conditions at the Site, previously unknown to EPA, are discovered,

or

- (2) information, previously unknown to EPA, is received, in whole or

in part,

and EPA determines that these **previously** unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

85. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel International Paper or the City of Tomah, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agency

- a. to perform further response actions relating to the Site, or
- b. to reimburse the United States for additional costs of response,

if subsequent to Certification of Completion of the Remedial Action:

- (1) conditions at the Site, previously unknown to EPA, are discovered,

or

- (2) information, previously unknown to EPA, is received, in whole or

in part,

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

86. For purposes of Paragraph 84, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the OU2 ROD was signed and set forth in the OU1 and OU2 Records of Decision for the Site and the administrative records supporting the Records of Decision. For purposes of Paragraph 85, the

information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the OU1 and OU2 Records of Decision, the administrative records supporting the OU1 and OU2 Records of Decision, the post-ROD administrative records, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

87. General reservations of rights. The covenants set forth above do not pertain to any matters other than those expressly specified in Paragraph 83. The United States reserves, and this Consent Decree is without prejudice to, all rights against International Paper and the City of Tomah, and EPA and the Federal natural resources trustees reserve, and this Consent Decree is without prejudice to, all rights against the Settling Federal Agency, with respect to all other matters, including but not limited to, the following:

a. claims based on a failure by International Paper, the City of Tomah, or the Settling Federal Agency to meet a requirement of this Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

c. liability based upon ownership or operation of the Site by International Paper, the City of Tomah, or the Settling Federal Agency, or upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site by International Paper, the City of Tomah, or the Settling Federal Agency, other than as provided in the OU1 or OU2 RODs, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Parties;

- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. criminal liability;
- f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and
- g. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 14 (Modification of the SOW or Related Work Plans).

88. Work Takeover. In the event EPA determines that International Paper has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. International Paper may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 70, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that International Paper shall pay pursuant to Section XVI (Payment for Response Costs).

89. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY INTERNATIONAL PAPER

90. Covenant Not to Sue. Subject to the reservations in Paragraph 91, International Paper hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect the Site or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611-9613, or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607, 9613, related to the response action at the Site, or

c. any claims arising out of response actions at or in connection with the response action at the Site, including claims based on EPA's selection of response actions, oversight of response activities, or approval of plans for such activities, as well as any claim under the United States Constitution, the Wisconsin Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

Except as provided in Paragraph 100 (waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 84, 85, or 87(b)-(d), (g), but only to the extent that International Paper's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

91. International Paper reserves, and this Consent Decree is without prejudice to:

a. claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of International Paper's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA;

b. contribution claims against the City of Tomah and/or the Settling Federal Agency in the event any claim is asserted by the United States against International Paper under the authority of or under Paragraph 87(b)-(d), (g) of Section XXI (Covenants by the United States), but only to the same extent and for the same matters, transactions or occurrences as are raised in the claim of the United States against International Paper;

c. claims based on a failure by the City of Tomah or the Settling Federal Agency to meet a requirement of this Consent Decree or the 2002 Consent Decree; and

d. claims based on a failure by the City of Tomah to meet a requirement of the International Paper/City of Tomah Side Agreement.

92. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIII. COVENANTS BY THE CITY OF TOMAH

93. Covenant Not to Sue. Subject to the reservations in Paragraph 94, the City of Tomah hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the response action at the Site or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611-9613, or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607, 9613, related to the response action at the Site, or

c. any claims arising out of response actions at or in connection with the response action at the Site, including claims based on EPA's selection of response actions, oversight of response activities, or approval of plans for such activities, as well as any claim under the United States Constitution, the Wisconsin Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

Except as provided in Paragraph 100 (waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an

order pursuant to the reservations set forth in Paragraphs 84, 85, 87(b)-(d), (g), but only to the extent that International Paper's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

94. The City of Tomah reserves, and this Consent Decree is without prejudice to:

a. claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of International Paper's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA;

b. contribution claims against International Paper and/or the Settling Federal Agency in the event any claim is asserted by the United States against the City of Tomah under the authority of or under Paragraph 87(b)-(d), (g) of Section XXI (Covenants by the United States), but only to the same extent and for the same matters, transactions or occurrences as are raised in the claim of the United States against the City of Tomah; and

c. claims based on a failure by International Paper or the Settling Federal Agency to meet a requirement of this Consent Decree or the 2002 Consent Decree.

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

95. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

96. The Parties agree, and by entering this Consent Decree this Court finds, that International Paper, the City of Tomah, and the Settling Federal Agency are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree; provided, however, that such contribution protection shall not bar claims by International Paper or the City of Tomah against one another for failure to meet a requirement of the International Paper/City of Tomah Side Agreement. The "matters addressed in this Consent Decree" are the Work and Future Response Costs.

97. International Paper agrees that with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree it will notify the United States and the City of Tomah in writing no later than 60 days prior to the initiation of such suit or claim against any party not previously identified by EPA as a Potentially Responsible Party at the Site.

98. The City of Tomah agrees that with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree it will notify the United States and International Paper in writing no later than 60 days prior to the initiation of such suit or claim against any party not previously identified by EPA as a Potentially Responsible Party at the Site.

99. International Paper and the City of Tomah also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, International Paper and the City of Tomah shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

100. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, International Paper and the City of Tomah shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants by the United States).

XXV. ACCESS TO INFORMATION

101. International Paper shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited

to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. International Paper shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

102. Business Confidential and Privileged Documents.

a. International Paper may assert business confidentiality claims covering part or all of the documents or information submitted to the United States under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified International Paper that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to International Paper.

b. International Paper may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If International Paper asserts such a privilege in lieu of providing documents, it shall provide the United States the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a

description of the contents of the document, record, or information: and (6) the privilege asserted by International Paper. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

103. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXVI. RETENTION OF RECORDS

104. Until 10 years after International Paper's receipt of EPA's notification pursuant to Paragraph 51.b of Section XIV (Certification of Completion of the Work), International Paper shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site. International Paper must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that International Paper (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above

record retention requirements shall apply regardless of any corporate retention policy to the contrary.

105. At the conclusion of this document retention period, International Paper shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, International Paper shall deliver any such records or documents to EPA. International Paper may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If International Paper asserts such a privilege, it shall provide the United States with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by International Paper. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

106. International Paper hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

107. The United States acknowledges that the Settling Federal Agency: (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has certified that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XXVII. NOTICES AND SUBMISSIONS

108. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States (including the Settling Federal Agency), EPA, International Paper, and the City of Tomah.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-1317/1

and

Chief, Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
Re: DJ # 90-11-6-17206

As to EPA:

Director, Superfund Division
U. S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604

and

Denise Boone
EPA Project Coordinator
U. S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604

As to the State:

Eileen Kramer
Project Manager
Wisconsin Department of Natural Resources
P.O. Box 4001
1300 W. Clairmont Avenue
Eau Claire, WI 54702

As to International Paper:

Roger Schumer
Project Coordinator
International Paper Company
6400 Poplar Avenue
Memphis, TN 38197

As to the City of Tomah:

Richard A. Radcliffe
City Attorney
917 Superior Avenue
P.O. Box 110
Tomah, WI 54660-0110

XXVIII. EFFECTIVE DATE

109. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXIX. RETENTION OF JURISDICTION

110. This Court retains jurisdiction over both the subject matter of this Consent Decree and International Paper and the City of Tomah for the duration of the performance of the terms

and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

XXX. APPENDICES

111. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the OU1 ROD.

“Appendix B” is the OU2 ROD.

“Appendix C” is the SOW.

“Appendix D” is the description and/or map of the Site.

“Appendix E” is a draft easement.

XXXI. COMMUNITY RELATIONS

112. International Paper shall cooperate with EPA in providing the public information regarding the Work. As requested by EPA, International Paper shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXII. MODIFICATION

113. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and International Paper. All such modifications shall be made in writing.

114. Except as provided in Paragraph 14 (Modification of the SOW or Related Work Plans), no material modifications shall be made to the SOW without written notification to and written approval of the United States, International Paper, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(B)(ii). Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document, or material modifications to the SOW that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(B)(ii), may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and International Paper.

115. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

116. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. International Paper and the City of Tomah consent to the entry of this Consent Decree without further notice.

117. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIV. SIGNATORIES/SERVICE

118. The undersigned representative of International Paper, the City of Tomah, and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

119. International Paper and the City of Tomah hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified International Paper and the City of Tomah in writing that it no longer supports entry of the Consent Decree.

120. International Paper and the City of Tomah shall each identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. International Paper and the City of Tomah hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XXXV. FINAL JUDGMENT

121. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement

embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

122. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, International Paper, and the City of Tomah. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2004.

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTIES enter into this CONSENT DECREE FOR OPERABLE UNIT 2 in the matter of United States v. City of Tomah, et al., relating to the Tomah Municipal Sanitary Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 12/8/04

W. Benjamin Fisherow
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date: 12/17/04

Letitia J. Grishaw
Chief
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice

Date: 12/8/04

Mitchell G. Page
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611

Date: 12/17/04

Stephen Crowley
Trial Attorney
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

Date: _____

Mullen Dowdal
Assistant United States Attorney
Western District of Wisconsin
U.S. Department of Justice
600 West Washington Ave., Ste. 200
P.O. Box 1585
Madison, WI 53701-1585

Date: 9-30-04

Richard C. Karl
~~Acting~~ Director, Superfund Division
U.S. Environmental Protection Agency,
Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Date: 9/28/04

Timothy J. Thurlow
Associate Regional Counsel
U.S. Environmental Protection Agency,
Region 5
77 West Jackson Boulevard
Chicago, IL 60604

THE UNDERSIGNED PARTY enters into this CONSENT DECREE FOR OPERABLE UNIT 2 in the matter of United States v. City of Tomah, et al., relating to the Tomah Municipal Sanitary Landfill Superfund Site.

FOR INTERNATIONAL PAPER COMPANY

Date: 9/23/04

~~CONFIDENTIAL~~
Duane Marshall
Director, Corporate Environment,
~~Health and Safety~~ ~~DPK~~
International Paper Company
6400 Poplar Avenue
Memphis, TN 38197

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:

Ronald R. Ragatz, DeWitt Ross & Stevens, S.C.

Title:

Attorney

Address:

2 East Mifflin Street, Suite 600
Madison, WI 53703

Tel. Number:

THE UNDERSIGNED PARTY enters into this CONSENT DECREE FOR OPERABLE UNIT 2 in the matter of United States v. City of Tomah, et al., relating to the Tomah Municipal Sanitary Landfill Superfund Site.

FOR THE CITY OF TOMAH, WISCONSIN

Date: 9-28-04

Chuck Ludeking, Mayor
819 Superior Avenue
Tomah, WI 54660



Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Richard A. Radcliffe

Title: City Attorney

Address: 917 Superior Avenue
P.O. Box 110
Tomah, WI 54660

Tel. Number: